

WHEREAS, on December 19, 2024, IBM filed its second set of Counterclaims (Dkt. 115 (“Second Counterclaims”)) against VirtaMove, which, in addition to its previously-pled Count 5, pled additional counterclaims of inequitable conduct in new Counts 6 and 7;

WHEREAS, the parties agree that the issues raised in the Partial Motion to Dismiss Count 5 as well as IBM’s Response (Dkt. 69 (“Response”)) and VirtaMove’s Reply (Dkt. 71 “Reply”) shall apply equally to Count 5 in IBM’s Second Counterclaims;

WHEREAS, VirtaMove agrees that it will not move to dismiss Counts 6 and/or 7 pled in IBM’s Second Counterclaims.

WHEREAS, unless the Court wishes to proceed differently, the parties have reached agreement on certain procedural issues relating to the Motion to Dismiss the First Counterclaims and the Second Counterclaims;

The parties, by and through their respective undersigned counsel, stipulate as follows:

1. VirtaMove does not need to re-file or re-brief its Partial Motion to Dismiss Count 5 because the same Count 5 in IBM’s Second Counterclaims does not affect the arguments made in support of or in opposition to VirtaMove’s Partial Motion to Dismiss Count 5, and because VirtaMove will not be moving to dismiss new Counts 6 and/or 7. The parties agree that the Motion to Dismiss Count 5 as well as the Response and Reply thereto shall apply equally to Count 5 in both the First Counterclaims and Second Counterclaims, and can be decided by the Court as currently briefed.

2. If the Court prefers to proceed differently, the parties will defer to the Court’s preference.

Dated: January 23, 2025

Respectfully submitted,

By: /s/ Daniel B. Kolko

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5(a)(3) on January 23, 2025.

/s/ Daniel B. Kolko

Daniel B. Kolko

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that on January 22, 2025, counsel for Plaintiff conferred with counsel for Defendant regarding this joint motion via email and a telephone call in compliance with Local Rule CV-7(h) and CV-7(i).

/s/ Daniel B. Kolko

Daniel B. Kolko